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Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

December 2, 2015

Dear Ms. Townsend:

Please accept these comments regarding the Urban Water Conservation Public Workshop of December 7, 2015. It is our understanding that this workshop is to receive input on the potential extension and modification of the existing Emergency Regulations for Statewide Urban Water Conservation, should drought conditions persist into 2016. These comments are submitted on behalf of my clients, the El Dorado County Water Agency (ECWA) and the Calaveras County Water District (CCWD).

Earlier this year ECWA and CCWD supported the Governor's April 1, 2015 Executive Order and his objective of achieving an aggregate statewide 25% reduction in water use through February 2016. They also supported the Board's efforts to promptly impose the implementing regulations.

Both ECWA and CCWD are located within the Sierra Nevada Mountain Range and foothills. Significant portions of their service areas have been designated by the State of California as Disadvantaged Communities (DAC). The agencies are located inland and are within areas with much higher evapotranspiration rates (ET) than cooler, coastal regions. ECWA and CCWD are relatively modest sized agencies that do not enjoy the large service population, economy of scale, or the luxury and efficiency of water systems that were recently constructed. Additionally, being predominantly rural in nature, these agencies have lower housing density service areas when compared to urbanized communities.

The Board's notice on this item contained three questions, to which we have responded only on question 1.

**Question 1. What elements of the existing Emergency Regulation, if any, should be modified in an extended Emergency Regulation?**

**Answers:**

**A. Regulations should be tailored to accommodate local precipitation, runoff, storage, environmental and community conditions.** (Please note, this answer also applies in part to the Board's question 3)

The Governor's most recent Executive Order B-36-15 (item #3) states in part, "*If drought conditions persist through January 2016, the Water Board shall extend until October 31, 2016, restrictions to achieve a statewide reduction in potable water usage.*"

California's water infrastructure (natural and man-made) is not a completely interconnected, monolithic, water system. Water systems are in some instances very large insofar as their service area and even interregional. Their supplies are drawn from dozens of watersheds, tributaries, and even the ocean. Two examples of such large systems are the State Water Project and the Central Valley Project. Some water suppliers obtain their water, or at least a significant portion of it, from beyond the boundaries of California. Drought will mean different things to different water agencies insofar as available supplies, the diversity of their supply sources, the location of those sources, the amount of precipitation in those source areas, as well as on-hand storage in surface and groundwater facilities. Therefore, a drought in one major watershed may not translate into a drought within that same watershed for a small system served by a third order tributary stream.

Many of California's water systems are supplied by small second, third and even fourth order tributaries, in topographically isolated watersheds. For those water systems precipitation conditions in one part of the state, or even in the same hydrologic region do not diminish or create water supplies. Moreover, on a grander scale, drought conditions in some parts of the state do not, create or influence, water availability conditions in other parts of the State. While statewide predictions and supply estimates can be important to describe the relative scale of a drought, they do not necessarily correlate into meaningful implications, or data for local water supplies.

Therefore, it is imperative that the Board's actions regarding Emergency Regulations for this year recognize and accommodate the specificity of local factors. These accommodations must examine more detailed information than just that provided by examining the main rivers and watersheds. The level of detail should incorporate at least second order tributaries and if possible, third or

fourth order tributaries that supply specific local water systems. The regulations should incorporate adjustments to reflect actual water supply conditions due to differences in precipitation, runoff and storage that are the source(s) of local water systems, streams and rivers. It must be noted that some streams, sustain a local fisheries resource that is not anadromous but is nonetheless locally important. Aquatic resources also need to be accommodated in the regulations as they may pertain to flow requirements mandated by Federal Energy Regulatory Commission (FERC) licenses and waivers to those flows as provided in license articles.

**B. R-GPCD should reflect a broader spectrum of beneficial uses of water than basic health and human safety and minimalist outdoor water use. Any regulations should provide for the outdoor irrigation of gardens on residential parcels and accommodate the individual's ability to raise crops within the same relative levels of efficiency as commercial agricultural users.**

Water use in many rural communities is not confined to indoor use and outdoor decorative landscaping. Residential customers often use potable water to grow crops and such use has been occurring, with tangible benefits for at least 80 years. During the Gold Rush era of the 1850's one of the first acts by many families (and some miners) was to put in a vegetable garden, plant fruit and nut trees and grapevines and raise domesticated livestock and poultry. These actions provided basic "health and human safety" to those people by growing the food they needed to survive. The source of water for those activities was usually the use of raw water taken from the ditches, flumes and nearby streams that supplied the mines and mining camps. Eventually, these farms and gardens became larger and some supplied nearby stores and eating establishments.

These practices evolved over time, but the number and size of gardens, fruit, nut trees, vines and incidental domesticated livestock and poultry continue today in many rural northern California communities. What has changed is that the raw water systems have been replaced by treated water systems as methods to supply each family dwelling with water. The beneficial use of the water for growing food however, is the same.

These same types of gardens were called Victory Gardens<sup>1</sup> during World War II and grown to offset government rationing and shortages of certain foods. Today's rural gardens are increasingly dedicated to grow organic produce used

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<sup>1</sup> The US Department of Agriculture estimates that more than 20 million victory gardens were planted. Fruit and vegetables harvested in these home and community plots was estimated to be 9-10 million tons, an amount equal to all commercial production of fresh vegetables. So, the program made a difference.

by the family as a fresh and healthier food source. Some larger gardens, replicate the old large family gardens of the Gold Rush era and supply local restaurants and stores with fresh, locally grown organic produce.

Any regulations should allow for the outdoor irrigation of gardens on residential parcels and accommodate the individual's ability to raise crops within the same relative levels of efficiency as commercial agricultural users. The definition of commercial agriculture by California should not be a factor influencing the ability to use potable water when raising food for one's family.

### **C. Amend Article 22.5 Drought Emergency Water Conservation as follows.**

#### **Section 864 fails to recognize critical differences in outdoor landscape types and function.**

Outdoor landscaping may be composed of any variety of plants; native, non-native, drought tolerant, excessive water users, etc. In rural northern California watersheds, communities served by public water systems exist side-by-side with fauna (in the broadest definition) of various species of insects, amphibians, reptiles and mammals. In these same areas the landscapes of 100+ years ago contained a lower density of native vegetative cover. Those landscapes, therefore, resulted in the loss of less water to ET than the overgrown wildland landscapes of today. The overgrowth not only provides a dense and heavy fuel for wildfires, but it also takes water out of the small, naturally occurring seeps, bogs, springs and perennial streams that used to exist under a less dense vegetative cover. Those small water sources were not only valuable for fauna to use for intake of water, but also provided key places for native vegetation (food) to grow. In short the overgrowth has dried up the wildland landscape.

Absent those naturally occurring small water source areas, the surrogate supply of dry-year water and food for fauna was ironically, irrigated gardens, fruit trees herb gardens and native bunch grasses and clover planted on residential parcels. The functionality and value of irrigated landscapes of native species or even non-native species sought out by fauna is very high during dry-year events. These outdoor landscapes, particularly those with native plantings are extremely valuable to the fauna, are drought resistant and are sought out by various species of wildlife as a sole source of nutrients and moisture.

Regulatory measures targeting outdoor landscapes that make no distinction between non-native, non-drought resistant and non valuable plantings for fauna and those that are native, drought resistant and valuable for fauna, not only do

little good, they are quite harmful to the native fauna. This past 4-year drought provided ample evidence to those living in these rural areas of just how important keeping habitat for fauna alive was. Unfortunately, there was no commensurate public affairs campaign to educate the general public of the significance of those small, important areas.

The Board should provide for the accommodation of efficient water use conservation measures for outdoor landscaping that captures the value of said irrigated landscapes for the native fauna of California's watersheds. During multi-year droughts, it is important to remember that while people are given an indoor and outdoor water budget; the fauna only have one, and in many cases for them to survive, so must those native outdoor landscapes.

Local water agencies and the Board should work with the California Dept. of Fish and Wildlife to provide outdoor landscape standards for plantings that are important for the needs of native fauna. Those standards should be promulgated and incorporated into any drought emergency regulations as quickly as possible. Those same standards should ultimately, be incorporated into the Department of Water Resources model outdoor landscape ordinance.

**D. Section 865 (a)(4)(b)(2) should be amended as follows.**

“Prepare and submit to the State Water Resources Control Board by the 15<sup>th</sup> of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced less that amount produced which was calculated by the Urban Water Supplier to be used for the production of vegetable gardens, vines, fruit and nut crops on residential parcels, including water provided by a wholesaler in the preceding calendar month and shall be compare that amount to the amount produced in the same calendar month in 2013, less that amount produced which was estimated by the Urban Water Supplier to be used for the production of vegetable gardens, vines, fruit and nut crops on residential parcels.”

**Section 865 (c)(2) should be added as follows.**

Each urban water supplier whose source of supply does not include groundwater, except has provided herein, or water imported from outside the hydrologic region in which the water supplier is located, and has storage or other supplies as defined in this section, may submit to the Executive Director for approval a request that in lieu of the reduction that would otherwise be required

under paragraphs (3) through (10), the urban water supplier shall reduce its total water production for each month less any adjustments as provide in section 865 (a)(4)(b)(2) by the amounts set out in this section as compared to the same amount used in 2013.

“The presence of a surface storage supply secured by water rights held by the subject water supplier, or a groundwater supply in an adjudicated groundwater basin, or a groundwater basin not classified as being in a state of critical overdraft, or a combination of both surface and groundwater storage, or incorporating ocean desalination supplies, shall modify any water use reduction requirements under paragraphs (3) through (10) as follows:

1). An existing supply (based on 2013 consumption figures) of 48 months or more will require 0% reduction in water use.

2. An on hand supply 30-47 months (based on 2013 consumption figures) will require a 2% reduction in water use.

3. An on hand supply 18-29 months (based on 2013 consumption figures) will require an 4% reduction in water use.

4. An on hand supply 12-17 months (based on 2013 consumption figures) will require a 6% reduction in water use.

The agency requesting such relief shall provide the necessary data to support the reduction provisions as provided for in this section. Failure to produce the data within 45 days of notice by the Board shall nullify the agency’s ability to utilize the relief provided within this section.”

### **System Wide Efficiencies**

We urge the SWRCB to allow for the consideration of total water system efficiencies and not simply end user R-GPCD metrics. For example, efficiencies in raw water distribution systems, particularly in older, small, rural systems, can be a very important way to reduce total water savings. Total water saving is after all, the objective of the efficient use of water. Therefore, the Board should provide for inclusion of distribution system efficiencies, as defined by the local water agency consistent with SBX 7-7 as one more way to improve the efficient use of water. This could best be accommodated by revising the references in the regulations from (treated) water production, to allowing for water system efficiencies as provided in SBX 7-7.

Thank you for the opportunity to provide comments. We look forward to working with you to develop improved Emergency Regulations for 2016, should they prove necessary.

Best,

*John S. Mills*

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